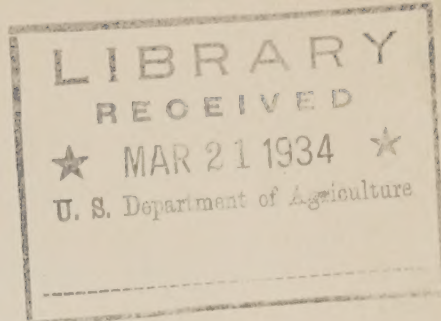


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Group 1



AMENDMENTS TO AGRICULTURAL ADJUSTMENT ACT (48 STAT. 31)

GROUP I

Suggested Important Amendments

To Clarify, Strengthen and Add to the

Agricultural Adjustment Act

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The following amendments, while important and giving force to existing provisions, are primarily clarifying in effect. They do not involve any change in the policies embodied in the original Act.

AMENDMENT TO SECTION 2 (1)

Amend subsection (1) of Section 2 by inserting after the words "in the case of all" in line 7, the word "basic" and insert at the end of the subsection the following:

"In the case of all agricultural commodities other than basic agricultural commodities, the base period shall be the prewar period, August 1909-July 1914, except in the case of those commodities for which the Secretary of Agriculture determines there are no adequate records during such period, in which event the base period shall be such representative period as the Secretary of Agriculture determines."

This subsection as amended will read (new matter underscored):

"(1) To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all basic agricultural commodities except tobacco shall be the prewar period, August 1909-July 1914. In the case of tobacco, the base period shall be the postwar period, August 1919-July 1929. In the case of all agricultural commodities other than basic agricultural commodities, the base period shall be the prewar period, August 1909-July 1914, except in the case of those commodities for which the Secretary of Agriculture determines there are no adequate records during such period, in which event the base period shall be such representative period as the Secretary of Agriculture determines."

COMMENTS

The purpose of the above amendment is to fix for nonbasic commodities a parity goal which can be capable of exact determination since in the case of many such commodities there are no adequate data for the prewar period.

AMENDMENT TO SECTION 2 (3)

Amend subsection (3) of Section 2 by striking out that portion of the subsection beginning with the word "readjusting," in line 1, and ending with the words "August 1909-July 1914" and insert in lieu thereof the following:

"eliminating marketing waste and increasing efficiency in distribution of agricultural commodities and the products thereof."

This subsection as amended will read (new matter underscored):

"(3) To protect the consumers' interest by eliminating marketing waste and increasing efficiency in distribution of agricultural commodities and the products thereof."

COMMENTS ON ABOVE

The present provision, for which the above is a recommended substitute, reads as follows:

"(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the prewar period, August 1909--July 1914."

It is not a clear statement of one method by which the Agricultural Adjustment Act can and should protect consumers. The limit of parity prices to farmers specified in the Act is one protection. The other protection which was meant to be specified in subsection (3) of Section 2 is by preventing the spread between farm prices and consumer prices from being unreasonable. The present provision obscures and makes difficult this latter protection. It is proposed to state this plainly in the above amendment.

OK

AMENDMENT TO SECTION 8 (1)

Amend Section 8 (1) by inserting after the first sentence the following:

"Agreements authorized by this section may include, among others, provisions requiring the producers who are parties to such agreements to reduce or limit acreage and/or production for market of agricultural commodities other than basic agricultural commodities as well as of basic agricultural commodities."

This subsection as amended will read (new matter underscored):

"(1) To provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, in such amounts as the Secretary deems fair and reasonable, to be paid out of any moneys available for such payments. Agreements authorized by this section may include, among others, provisions requiring the producers who are parties to such agreements to reduce or limit acreage and/or production for market of agricultural commodities other than basic agricultural commodities as well as of basic agricultural commodities." Under regulations of the Secretary of Agriculture requiring adequate facilities for the storage of any non-perishable agricultural commodity on the farm, inspection and measurement of any such commodity so stored, and the locking and sealing thereof, and such other regulations as may be prescribed by the Secretary of Agriculture for the protection of such commodity and for the marketing thereof, a reasonable percentage of any benefit payment may be advanced on any such commodity so stored. In any such case, such deduction may be made from the amount of the benefit payment as the Secretary of Agriculture determines will reasonably compensate for the cost of inspection and sealing, but no deduction may be made for interest."

COMMENTS ON ABOVE

The suggested amendment is designed to make explicit the right of the Secretary of Agriculture to prevent increased production of other commodities by means of labor, materials, etc., freed by the reduction of the basic commodities.

AMENDMENT TO SECTION 8 (2)

Amend subsection (2) of Section 8 by inserting after the word "processors" in line 1, the word "producers"; by striking out in line 5 the words "to interested parties"; by placing the clause "after due notice and opportunity for hearing" at the beginning of the subsection followed by a comma; and by inserting after the words "current of" in line 3 the following:

"or in competition with, or so as to burden,
obstruct, or in any way affect".

This subsection as amended will read (new matter underscored):

"(2) After due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, in the current of or in competition with, or so as to burden, obstruct or in any way affect, interstate or foreign commerce. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreements shall be deemed to be lawful: Provided, That no such agreement shall remain in force after the termination of this Act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under Section 5 of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements."

COMMENTS ON ABOVE

The suggested additions merely make clear the intention of Congress to permit the Secretary of Agriculture to use marketing agreements in as wide a field as possible. Under the Present form of the Act it may be contended that only interstate transactions can be covered by a marketing agreement. The amendment makes it clear that transactions affecting interstate commerce may also be covered by marketing agreements.

The marketing agreement provisions have also been extended to permit individual producers to become parties to the agreements.

The words "to interested parties" have been stricken out of the notice and hearing clause since they add nothing to the effect of the Section.

AMENDMENT TO SECTION 8 (3)

Strike out the last sentence of Section 10, subsection (h); strike out present terms of Section 8 (3) and substitute therefor the following (language which has been retained is underscored):

"Section 8 (3). (a) After due notice and opportunity for hearing, (1) to prohibit processors, producers, associations of producers, and others from engaging in the handling of any agricultural commodity or product thereof, or any competing commodity or product thereof, in the current of or in competition with, or so as to burden, obstruct or in any way affect, interstate or foreign commerce, without a license, and (2) to issue licenses to permit processors, producers, associations of producers, and others to engage in such handling upon such terms and conditions as the Secretary of Agriculture may deem necessary to effectuate the declared policy of this Act and the restoration of normal economic conditions in the marketing, and/or financing of such commodities.

"(b) After due notice and opportunity for hearing, to revoke or suspend any such license as to or of any person or persons for violation of the terms or conditions thereof. Any order of the Secretary of Agriculture so revoking or suspending any such license shall be final if in accordance with law.

"(c) Any person exceeding any quota or allotment fixed for him by a license issued pursuant to this subsection shall forfeit to the United States a sum equal to three times the value of such excess, which forfeiture shall be payable into the Treasury of the United States and shall be recoverable in a civil suit brought in the name of the United States. All sums so recovered and paid into the Treasury are hereby appropriated to be available to the Secretary of Agriculture for the purposes described in section 12 (b) of this Act.

"(d) The Secretary of Agriculture shall not incorporate in any license issued pursuant to this subsection provisions for the establishment of production quotas for producers, limiting the amount of the commodity with respect to which such license is issued which may be purchased, or in any other way received, from such producers, unless he determines that such provisions have been requested by producers controlling more than two-thirds of the average acreage planted within the area covered by such license to such commodity during such period as he determines to be representative.

"(e) Any person engaged in such handling without a license in violation of the terms of this subsection, or in violation of the terms of any license issued to or with respect to such person, and any other person knowingly participating in or aiding such handling, and any other person knowingly engaging in or carrying on the same business undertaking of any licensee whose license has been revoked, shall forfeit to the United States the sum, of One Thousand Dollars (\$1,000), or such lesser sum as the Secretary of Agriculture may determine, for each day during which such violation or such carrying on of said business undertaking continues, which forfeiture shall be payable into the Treasury of the United States and shall be recoverable in a civil suit brought in the name of the United States.

"(f) The several district courts of the United States are hereby vested with jurisdiction to prevent and restrain violations of any marketing agreement approved by the Secretary of Agriculture and of any license issued by him, pursuant to the provisions of this Act, and to prevent and restrain any person from handling any agricultural commodity or product thereof or competing commodity or product thereof, without a license when such handling of such commodity without a license has been prohibited by the Secretary of Agriculture, pursuant to the powers vested in him by this Act.

"(g) The remedies provided for in this subsection shall be in addition to and not exclusive of, any of the remedies or penalties provided for elsewhere in this Act or now or hereafter existing at law or in equity.

"(h) Upon the request of the Secretary of Agriculture it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in this subsection."

COMMENTS ON ABOVE

Section 8 (3) relates to licenses which may be issued to certain persons engaged in handling commodities. As this section of the Act now reads it permits the licensing of "associations of producers" as such handlers but does not permit the licensing of individual producers as handlers. This has caused much administrative difficulty and the foregoing amendment is designed to eliminate that difficulty. It will be observed that the above amendment would not permit the licensing of producers except in their capacity as handlers of a commodity.

It is considered desirable to provide that producers shall not be limited to assigned quotas except where the producers controlling more than two-thirds of the acreage involved are in favor of such quotas.

It also seems wise to require a hearing before the issuance of licenses in order to make the license and marketing agreement provisions similar.

The other suggested changes in this Section are most important additions to the effectiveness of the enforcement provisions. Thus, there is some doubt under the present wording of the Act as to the extent to which injunctions may be used to enforce licenses. It is also highly desirable that, where quotas are fixed by a license and a licensee exceeds the quota, he shall be subjected to adequate damages for such violation. Also, it is most important that there be no doubt that a penalty can attach to a violation of a license provision in addition to the penalty now existing for operating without a license.

AMENDMENT TO SECTION 8 (4)

Strike out Section 8 (4) and substitute therefor the following (language which has been retained is underscored):

"(4) To require any licensee under this section to furnish to the Secretary of Agriculture such reports and such answers to interrogatories, as to the quantities bought and/or sold by him of agricultural commodities or products thereof and/or competing commodities or products thereof, with respect to the handling of which such licensee is licensed, and as to the prices of such commodities, and as to trade practices and charges, and as to the details of any transaction of such licensee, in the handling of such commodities or products thereof, and as to all other matters, as may be necessary for the purposes of part 2 of this title; to require any such licensee to keep such accounts or such systems of accounts as may be prescribed by the Secretary of Agriculture for the purposes of part 2 of this title, to require any such licensee, at all reasonable times, to permit the Secretary of Agriculture, to have access to, to examine and to copy any books, records, accounts, contracts, documents, memoranda, papers, correspondence, and other written data belonging to or kept on behalf of such licensee, or any subsidiary, affiliate, agent or broker of such licensee, relating to the handling of any agricultural commodities or products thereof, or any competing commodities or products thereof, with respect

to which such licensee is licensed. All information furnished to or obtained by the Secretary of Agriculture pursuant to this Section shall remain the confidential information of the Secretary of Agriculture and such of his agents and employees as may be entitled to the same in the regular course of their official duties, and shall not be divulged, disclosed or made public except that such information (a) may be combined and published in the form of general statistical studies or data in which the identity of the persons furnishing such information shall not be disclosed, (b) may be divulged or disclosed upon lawful demand made by the President or by either House of Congress or any committee thereof, or in response to a subpoena issued by any court of competent jurisdiction, and (c) may be offered in evidence by or on behalf of the Secretary of Agriculture or the United States, or both, in any action, suit or proceeding brought pursuant to this Act, or in hearing held pursuant to this Act, or in any other action, suit or proceeding in which the validity, propriety or applicability of the provisions of any license is challenged or involved, whether or not such information was obtained from or furnished by the person or persons by or against whom such action, suit, proceeding or hearing was instituted."

COMMENTS ON ABOVE

Our experience has amply demonstrated the fact that in shaping policies in connection with the provisions of marketing agreements and licenses, it is of the greatest importance that there should be available to the Secretary the most complete information (not available except through complete examination of books and records) as to direct and indirect costs, earnings, and other matters relating to the processors and handlers who are parties to such agreements or are licensees.

This became unmistakably evident, for instance, in the case of our milk marketing agreements and licenses. Prior to the time when we made complete audits, we had been led to believe that the spreads between the price of milk paid the farmers and the prices charged to consumers were, in most milk sheds, very narrow. Through audits of the books and records of the milk distributors we discovered that, during the depression years, these spreads which, from ordinarily available statistical data, seemed

meager per unit, in fact afforded the distributors exorbitant profits. These and other important facts as to the industry, bearing on policy, were revealed by those audits which could have been obtained in no other way.

Moreover, in order to determine whether exemptions from the antitrust laws and other privileges and advantages to processors and distributors given under agreements and Licenses,

(a) operate in such a way as to give the producers and consumers a fair share of those privileges, or

(b) result in the prevention of competition so that undesirably high prices are exacted of consumers which, undesirably, reduce or prevent necessary increase of purchasing power indispensable to lasting economic recovery,

it is necessary that the books and records of processors and distributors who are parties to agreements or licenses, be subject, without limitation, to the scrutiny of the Secretary.

Of course, such information should (in the manner set forth in the proposed amendment) be kept confidential except under unusual circumstances comparable to those which govern the use of information obtained by the Bureau of Internal Revenue with respect to income taxes.

Confidentially there is some considerable doubt as to whether the language of the existing statute - Section 8 (4) and Section 10 (h) - makes it possible, except by agreement, to obtain that complete access to such books and records which is indispensable for proper administration of the Act. To avoid this doubt and to make certain that the Secretary can obtain such information, when necessary, in order adequately to discharge his duties and perform his powers, the foregoing amendment is most important.

It may be added that the language is substantially in accord with that

which has been inserted by the Secretary in almost all marketing agreements and licenses, and, with respect to keeping such information confidential, in regulations heretofore approved by the President.

It is the opinion of representatives of the Antitrust Division of the Department of Justice who have been consulted, of the Solicitor of the Department of Agriculture, of the General Counsel of the Agricultural Adjustment Administration and of representatives of the Federal Trade Commission (including Commissioner Landis), by whom we have been advised, that the clear power to obtain information provided in the proposed amendment is absolutely necessary in order to justify the Secretary in exercising his extraordinary powers under the Act, by which he is authorized to disturb the forty-year old policy embodied in the antitrust laws. Without such information the Secretary will be unable to state that he is carefully observing the practical operations of industries to whom antitrust exemptions are granted by him. Otherwise he will be acting largely in the dark and be in no position to assure himself, or others, that the exercise of his unusual powers is, in fact, effectuating the declared purposes of the Act.

The auditors whom we have consulted advise us that any limitations on the scope of the audits and inquiries, referred to in the above amendment, will defeat the purpose of the amendment and make its usefulness illusory and impractical.

AMENDMENT TO SECTION 15 (b)

Amend Section 15 (b) by striking out the present provisions thereof and by inserting the following:

"(b) The Secretary of Agriculture is authorized, by regulations, to exempt, in whole or in part, from the payment of the processing tax, the processing of commodities by or for the producer thereof, where in the judgment of the Secretary of Agriculture the imposition of the processing tax with respect thereto is unnecessary to effectuate the declared policy of the Act, and

to make such further regulations as are necessary to give effect to the exemptions and to control exemptions within the limits granted, including regulations specifying, for all purposes, the proof of the right to any such exemption which shall be required from any producer."

COMMENTS ON ABOVE

The only way to control all exemptions to farmers within reasonable limits, to maintain a proper check thereon for revenue purposes, and to handle the matter with the least possible annoyance to farmers is to leave the matter of all exemptions to farmers to the discretion of the Secretary of Agriculture, on whose shoulders rests the success or failure of the various programs. The foregoing amendment will accomplish such ends.

AMENDMENT TO SECTION 15(c)

Amend Section 15 (c) by striking out the present provisions thereof and by inserting in lieu thereof the following:

"(c) Any person, including any State or Federal organization or institution, delivering any product to any organization for charitable distribution, or use, including any State Welfare organization for its own use, whether the product is delivered as merchandise, or as a container for merchandise, or otherwise, shall, if such product or the commodity from which processed is under this title subject to tax, be entitled to a refund of the amount of any tax due and paid under this title with respect to such product so delivered, or to a credit against any tax due and payable under this title of the amount of tax which would be refundable under this section with respect to such product so delivered, provided, however, that no tax shall be refunded or credited under this section, unless the person claiming the refund or credit establishes, in accordance with regulations prescribed by the Commissioner of Internal Revenue, with the approval

of the Secretary of the Treasury, (1) that he has not included the tax in the price of the product so delivered or collected the amount of the tax from the said organization, or (2) that he has repaid, or has agreed in writing to repay, the amount of the tax to the said organization. No refund shall be allowed under this section unless claim therefor is filed within six (6) months after delivery of the products to the organization for charitable distribution, or use."

COMMENTS ON ABOVE

In the case of State and Federal purchases for charitable distribution or use, it appears highly desirable that the processor should be permitted to credit, against taxes due and payable, the tax which would be refundable. In this manner, the tax would not be added to the price and the State and Federal organizations would be in a position to see to it that they get the benefit of the refund or credit of the tax. It would simplify very greatly the problems of the Federal Surplus Relief Corporation, the Red Cross and others.

The proviso in the proposed amendment is, in substance, similar to Section 621(d) relating to overpayment of taxes. (It is proposed that Section 19 be amended to make applicable the provisions of Section 621.)

As subsection (c) of Section 15 now reads, it authorizes the refunding of taxes to the person who delivers to the State or Federal organizations, even though no allowance therefor has been made by that person in the selling price of the particular product to said organizations. Such a result appears not to be the one anticipated or desired.

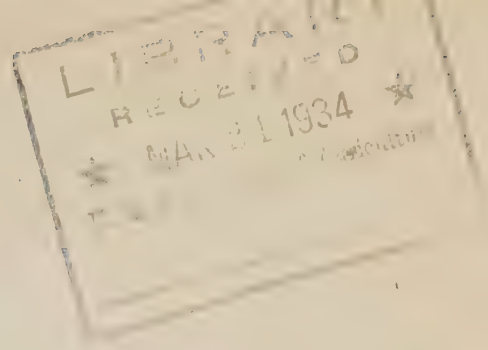
Various States have asked that we consider allowing the refund or credit on all sales to State Welfare organizations.

Where a State organization or institution buys a processed article in respect to which a processing tax has been paid, further processes

this article, and delivers it to an organization for charitable distribution or use exclusively, then it would seem that although the first processor is not entitled to an exemption on account of the delivery to the State institution, that institution should be entitled to the refund upon delivery to the charitable organization just as though the first processor had delivered it direct. Furthermore, there is always some question as to whether an organization making charitable distributions alone or required purely for charitable purposes should be required to deduct the amount of the processed products consumed by the employees. The Bureau of Internal Revenue has taken the position that this must be deducted as the statute now reads. This ruling requires much additional bookkeeping and is probably not the result which Congress intended to reach. It would seem to be desirable to clarify the statute so that a State welfare organization, or an organized charity, would be entitled to claim the refund on all of the products delivered without the necessity of a complicated method of keeping books.

The foregoing amendment cures the defects hereinabove mentioned.

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Am
Group 2:

AMENDMENTS TO AGRICULTURAL ADJUSTMENT ACT (48 STAT. 31)

GROUP II

Technical Amendments which both Clarify the Act and Strengthen
and Give Effect to Existing Provisions, or provisions
recommended in Group I.

AMENDMENT TO SECTION 9 (b)

Amend Section 9 (b) by striking out the period after the word "commodity" in line 13, and insert in lieu thereof a comma and the words:

"Unless the processing tax at such rate will otherwise defeat the declared policy, in which event it shall remain at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, or shall be at such lesser rate as will effectuate the declared policy."

This subsection as amended will read (new matter underscored):

"(b) the processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity; except that if the Secretary has reason to believe that the tax at such rate will cause such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then he shall cause an appropriate investigation to be made and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary finds that such result will occur, then the processing tax shall be at such rate as will prevent such accumulation of surplus stocks and depression of the farm price of the commodity, unless the processing tax at such rate will otherwise defeat the declared policy, in which event it shall remain at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, or shall be at such lesser rate as will effectuate the declared policy. In computing the current average farm price in the case of wheat, premiums paid producers for protein content shall not be taken into account."

COMMENTS

It might be found necessary to depress the farm price of a commodity by imposing the full rate of tax, in order to make it economically advantageous for producers to cooperate in the program and by this means to effectuate the declared policy of the Act.

This could not be done under the present language of Section 9 (b), whereas it could be done under the proposed amendment. For example, let us suppose that an insufficient number of producers of a commodity were cooperating and that a tax at the rate equaling the full difference between the current average farm price for the commodity and the fair exchange value thereof amounted to from 50 to 100 percent of the market price, a tax at this rate would make it uneconomic for farmers to raise the commodity, except within the limits within which they could raise the commodity by agreement with the Secretary of Agriculture. It is suggested that the Secretary of Agriculture should have the power to bring about cooperation in the program in this manner, if he should find that it was necessary to do so, in order to effectuate the declared policy of the Act.

AMENDMENT TO SECTION 9 (d)

Amend subdivision (1) of Section 9 (d) as follows:

In line 1, after the word "wheat", strike out the comma and add the word "or".

In line 1, strike out the words "and corn" and the comma which follows.

In line 3, after the word "wheat", strike out the comma and add the word "or".

In line 3, after the comma which follows the word "rice" strike out the words "or corn for market" and add in lieu thereof the words "for distribution, or use".

This subdivision as amended will read (new matter underscored):

"(1) In case of wheat or rice, the term 'processing' means the milling or other processing (except cleaning and drying) of wheat or rice, for distribution, or use, including custom milling for toll as well as commercial milling, but shall not include the grinding or cracking thereof not in the form of flour for feed purposes only."

Subdivision (4).

Strike out all of subdivision 4 and insert in lieu thereof the following:

"(4) In case of field corn, the term 'processing' means the milling or other processing (except cleaning and drying) of field corn for distribution, or use, including custom milling for toll, as well as commercial milling, but shall not include that portion of the field corn milled or otherwise processed which results in the production of feed."

Subdivision (5).

In line 3, strike out the words "market" and the comma which follows and insert the words "distribution, or use".

This subdivision as amended will read (new matter underscored):

"(5) In the case of any other commodity, the term 'processing' means any manufacturing or other processing involving a change in the form of the commodity or its preparation for distribution, or use, as defined by regulations of the Secretary of Agriculture; and in prescribing such regulations the Secretary of Agriculture shall give due weight to the customs of the industry."

COMMENTS

Because of the use of the term "for market", the exemption granted in subsection (b) of Section 15 is in many cases meaningless. Since a producer who processes, or has processed for him, hogs for consumption by his own family, employees, or household, is not processing, or having the hogs processed, for market, he does not come within the tax provisions of the Act at all. In addition, because of the use of the

words "for market" in subdivisions 1, 4, and 5, of subsection (d), of Section 9, a person who is not a producer can purchase a live hog, corn, wheat, or rice and process the commodity himself without being liable for any tax. In the case of hogs, he can have the hogs processed for him without the processors being liable for any tax.

The reason for striking out the definition of "processing" in the case of hogs is because there are situations in various parts of the country which could be met by giving the Secretary of Agriculture power to define the term in regulations. For instance, in many counties of the Northeast and Southeast, and in Virginia and Georgia, many farmers slaughter hogs and deliver the dressed carcass to the slaughterhouse. Those farmers are now liable for the processing tax. It is not possible, under the present wording of Section 9 (d) (4), to define first domestic processing in the case of hogs so as to have the slaughterhouse, which divides the dressed carcass into commercial cuts, pay the tax. By the above suggested amendment it would be possible to put the tax on the slaughterhouse, which divides the dressed carcass, and in the said communities we would have six or eight taxpayers instead of three or four hundred. The tax would be easier to collect and it might well be that the producer would gain a slight advantage in net receipts for his hogs. No loss of tax will result. Farmer objections to the processing tax are bound to be fewer.

The reason for taking field corn out of the definition in Section 9 (d) (1) is because "not in the form of flour" does not apply to field corn. In addition, it was unquestionably the intent that the processing tax was not to be shifted to the farmer, in the case of feed. As the statute now reads, some of the field corn being ground

and going into feed bears the tax, whereas corn ground for feed purposes only does not bear the tax. This is the result determined by the Bureau of Internal Revenue by its interpretation of the word "only". The new definition of "processing" in the case of field corn would mean that no part of the tax on field corn would be borne by feed.

AMENDMENT TO SECTION 10 (b)

Amend Section 10 (b) by inserting after the word "title" in line 3 the following:

"such agencies as he may deem necessary, including corporations organized pursuant to the laws of the several states or of the District of Columbia."

And by adding after the period in line 7 the following:

"The Secretary of Agriculture may provide that every person licensed by any license in connection with which any authority or agency is established pursuant to this Act shall pay his pro rata share of all the expenses authorized by the Secretary of Agriculture in the maintenance and functioning of said authority or agency. Payment is to be made in such amounts and in such manner and to such persons as the Secretary of Agriculture may direct, upon due notice of and after opportunity for hearing to any party dissatisfied with, the amount of such shares, which notice may be issued and which hearing may take place at the same time as the notice and hearing attendant upon the issuance of the license. The Secretary of Agriculture may institute legal proceedings in his own name or authorize any of the authorities or agencies above mentioned to institute legal proceedings in their own name, and may further authorize such authorities and agencies to take any other steps which may be necessary to collect such shares.

This subsection as amended will read (new matter underscored):

(b) The Secretary of Agriculture is authorized to establish, for the more effective administration of the functions vested in him by this title, such agencies as he may deem necessary, including corporations organized pursuant to the laws of the several states or of the District of Columbia. State and local committees, or associations of producers, and to permit

cooperative associations of producers, when in his judgment they are qualified to do so, to act as agents of their members and patrons in connection with the distribution of rental or benefit payments. The Secretary of Agriculture may provide that every person licensed by any license in connection with which any authority or agency is established pursuant to this Act, shall pay his prorata share of all the expenses authorized by the Secretary of Agriculture in the maintenance and functioning of said authority or agency. Payment is to be made in such amounts and in such manner and to such persons as the Secretary of Agriculture may direct, upon due notice of, and after opportunity for hearing to any party dissatisfied with, the amount of such shares, which notice may be issued and which hearing may take place at the same time as the notice and hearing attendant upon the issuance of the license. The Secretary of Agriculture may institute legal proceedings in his own name or authorize any of the authorities or agencies above mentioned to institute legal proceedings in their own name, and may further authorize such authorities and agencies to take any other steps which may be necessary to collect such shares."

COMMENTS

The purpose of the first of the above suggestions is merely to clarify the authority of the Secretary of Agriculture to use such agencies as he may deem proper. Under the existing language there is some possibility of a narrow construction to the effect that he may use only the agencies specified. The purpose of the second suggested amendment is to make clear the Secretary of Agriculture's power to make effective the desire of any industry to make self supporting the functioning of its internal authorities established under licenses.

AMENDMENT TO SECTION 10 (c)

Amend Section 10 (c) by striking out in lines two and three the words "with the approval of the President" and the commas preceding and following such words, and by inserting at end of Section 10 (c) the following:

"any determination which the Secretary of Agriculture, pursuant to the provisions of this Act, is required or authorized to make, shall be final if in accordance with law."

This subsection as amended will read (new matter underscored):

"(c) The Secretary of Agriculture is authorized, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by this title, including regulations establishing conversion factors for any commodity and article processed therefrom to determine the amount of tax imposed or refunds to be made with respect thereto. Any violation of any regulation shall be subject to such penalty, not in excess of \$100, as may be provided therein. Any determination which the Secretary of Agriculture, pursuant to the provisions of this Act, is required or authorized to make, shall be final if in accordance with law."

COMMENTS

The purpose of the first suggested amendment to this Section is to eliminate the burden upon the President of signing the many regulations which are necessary to the efficient administration of the Act, especially in tax matters, and to save the delays incident to the additional signature required by the present Section. The present provisions add nothing to the legal efficacy of the regulations.

The purpose of the suggested additional provision is to make clear the fact that the Secretary of Agriculture's determination in all matters, particularly tax matters, is final, if in accordance with law.

AMENDMENT TO SECTION 10 (h)

Amend Section 10 (h) by inserting after first sentence, which ends on line 7, the following:

"Specifically, and without limitation of the foregoing, the Secretary of Agriculture shall have power to require any person at all reasonable times, to permit the Secretary of Agriculture and his duly authorized agents, to have access to, to examine and to copy any books, records, accounts, contracts, documents, memoranda, papers, correspondence, and other written data belonging to or kept on behalf of such person, or any subsidiary, affiliate, agent, or broker of such person relating to any agricultural commodity or product thereof, or any competing commodity or product thereof with respect to which a hearing is being held, or an investigation is being made, preparatory to a hearing, pursuant to this Act; and the Secretary of Agriculture shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all such books, records, contracts, documents, memoranda, papers, correspondence, and other written data at such hearing or investigation. All information furnished to or obtained by the Secretary of Agriculture pursuant to this Section shall, if so specifically designated in writing by such person or corporation, remain the confidential information of the Secretary of Agriculture and such of his agents and employees as may be entitled to the same in the regular course of their official duties, and shall not be divulged, disclosed or made public, except in the manner provided in Section 8 (4) of this Act.

This subsection as amended will read (new matter underscored):

"(h) For the efficient administration of the provisions of part 2 of this title, the provisions, including penalties, of Sections 8, 9, and 10 of the Federal Trade Commission Act, approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary of Agriculture in administering the provisions of this title and to any person subject to the provisions of this title, whether or not a corporation. Specifically, and without limitation of the foregoing, the Secretary of Agriculture, shall have power to require any person at all reasonable times, to permit the Secretary of Agriculture and his duly authorized agents, to have access to, to examine and to copy any books records, accounts, contracts, documents, memoranda, papers, correspondence, and other written data belonging to or kept on behalf of such person, or any subsidiary, affiliate, agent, or broker of such person, relating to any agricultural commodity or product thereof, or any competing commodity or product thereof with respect to which a hearing is being

held, or an investigation is being made preparatory to a hearing, pursuant to this Act; and the Secretary of Agriculture shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all such books, records, contracts, documents, memoranda, papers, correspondence, and other written data at such hearing or investigation. All information furnished to or obtained by the Secretary of Agriculture pursuant to this section shall, if so specifically designated in writing by such person or corporation, remain the confidential information of the Secretary of Agriculture and such of his agents and employees as may be entitled to the same in the regular course of their official duties, and shall not be divulged, disclosed or made public except in the manner provided in Section 8 (4) of this Act. Hearings authorized or required under this title shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary of Agriculture may report any violation of any agreement entered into under part 2 of this title to the Attorney General of the United States, who shall cause appropriate proceedings to enforce such agreement to be commenced and prosecuted in the proper courts of the United States without delay."

COMMENTS

The Secretary of Agriculture is required to carry on investigations, to make findings based thereon, and to fix rates of taxes on the processing of basic agricultural and competing commodities. His power to subpoena witnesses and examine books in connection therewith is not too clear, and the foregoing is suggested as a clarifying amendment. The effect will be to make it certain that the Secretary of Agriculture can get the best available evidence and check all statements made at hearings, in connection with the duties he has to perform his powers to investigate being limited only by the Constitution, not by uncertainty in statutory language.

AMENDMENT TO SECTION 10 BY ADDING NEW SUBSECTION (i)

Amend Section 10 by inserting following subsection (h) the following new subsection (i):

"(i) The term 'person', as used in this Act, includes an individual, partnership, corporation, association, and any other business unit."

COMMENTS

The purpose of this amendment is simply to make clear the extent to which various of the tax and other provisions of the Act apply.

AMENDMENT TO SECTION 12 (b)

Amend Section 12(b) by adding thereto the following sentence:

"There is also hereby appropriated to be available to the Secretary of Agriculture for the purposes described in this Section all moneys heretofore or hereafter received from the sale or other disposition of any and all products which the Agricultural Adjustment Administration may acquire in the administration of this Act; Provided further, that any and all products which the Agricultural Adjustment Administration has acquired or may acquire in the administration of this Act may be used in payment of or exchange for services, rent, labor, materials and other products, whether agricultural or non-agricultural, upon such terms as will in the discretion of the Secretary of Agriculture tend to effectuate the purposes of this Act."

This subsection as amended will read (new matter underscored):

"(b) In addition to the foregoing, the proceeds derived from all taxes imposed under this title are hereby appropriated to be available to the Secretary of Agriculture for expansion of markets and removal of surplus agricultural products and the following purposes under part 2 of this title: Administrative

expenses, rental and benefit payments, and refunds on taxes. The Secretary of Agriculture and the Secretary of the Treasury shall jointly estimate from time to time the amounts, in addition to any money available under subsection (a), currently required for such purposes; and the Secretary of the Treasury shall, out of any money in the Treasury not otherwise appropriated, advance to the Secretary of Agriculture the amounts so estimated. The amount of any such advance shall be deducted from such tax proceeds as shall subsequently become available under this subsection. There is also hereby appropriated to be available to the Secretary of Agriculture for the purposes described in this Section all moneys heretofore or hereafter received from the sale or other disposition of any and all products which the Agricultural Adjustment Administration may acquire in the administration of this Act; provided further, that any and all products which the Agricultural Adjustment Administration has acquired or may acquire in the administration of this Act may be used in payment of or exchange for services, rent, labor, materials and other products, whether agricultural or non-agricultural, upon such terms as will in the discretion of the Secretary of Agriculture tend to effectuate the purposes of this Act."

COMMENTS

The purpose of the above amendment is to enable the Secretary of Agriculture to use for the purposes of the Agricultural Adjustment Act the proceeds of any property which under the Act he may acquire and dispose of, and to make it clear the uses to which the Secretary of Agriculture may put property so acquired. Under the existing law if the Secretary of Agriculture after the removal of surplus should determine to dispose of any part or product thereof by sale, the proceeds would go into the miscellaneous receipts of the Treasury, although the entire original expenditure would come from the appropriation of the Agricultural Adjustment Act.

AMENDMENT TO SECTION 12 (c)

Amend Section 12 (c) by inserting after the words "books of reference" in line 4, the words "for newspapers and clippings, for periodicals."

This subsection as amended will read (new matter underscored):

"(c) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and books of reference, for newspapers and clippings, for periodicals, for contract stenographic reporting services, and for printing and paper, in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title."

COMMENTS

The purpose of this change is to enable the Information Division to subscribe to the necessary newspapers, clipping services and periodicals.

AMENDMENT TO SECTION 12 BY ADDING NEW SUBSECTION (d)

Amend Section 12 by adding thereto after Section 12 (c) the following new subsection (d):

"(d) The Secretary of Agriculture is hereby authorized to accept invitations to and to participate in International Congresses, Conferences, and like events or bodies, to pay the share of the United States as an adhering member thereto and all other necessary expenses, out of any moneys appropriated or authorized to be appropriated under authority of the Agricultural Adjustment Act of May 12, 1933, where in his opinion membership in such bodies will carry out or advance the objectives of that Act.

COMMENTS

The purpose of the above suggested amendment is to make clear the authority of the Secretary of Agriculture to participate in International Congresses and the like, relating to the reduction of production of agricultural commodities.

AMENDMENT TO SECTION 14

Amend Section 14 by inserting after the word "thereof" in line 4, the words "and of such provision."

This subsection as amended will read (new matter underscored):

"14. If any provision of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid the validity of the remainder of this title and the applicability thereof and of such provision to other persons, circumstances, or commodities shall not be affected thereby."

COMMENTS

The suggested change will make this Section conform to the similar section in the National Industrial Recovery Act.

AMENDMENT TO SECTION 15 (a)

Amend Section 15 (a) by striking out in line 4, after the word "value" the words "compared with" and insert in lieu thereof a comma and the word "considering"; by inserting in line 5 after the word "manufacture" a comma; by inserting in line 6 after the word "tax," a comma and the words "at the full existing rate, or in any amount" followed by a comma; and by striking out in line 10 following the word "Treasury", the remainder of the paragraph and inserting in lieu thereof;

"and thereafter the processing tax with respect to such amount of the commodity as is used in the manufacture of such products shall be imposed at such rate, if any, as the Secretary of Agriculture determines and proclaims will effectuate the declared policy of the Act."

This subsection as amended will read (new matter underscored):

"(a) If the Secretary of Agriculture finds, upon investigation at any time and after due notice and opportunity for hearing to interested parties, that any class of products of any commodity is of such low value, considering the quantity of the commodity used for their manufacture, that the imposition of the processing tax at the full existing rate, or in any amount, would prevent in whole or in large part the use of the commodity in the manufacture of such products and thereby substantially reduce consumption and increase the surplus of the commodity, then the Secretary of Agriculture shall so certify to the Secretary of the Treasury, and thereafter the processing tax with respect to such amount of the commodity as is used in the manufacture of such products shall be imposed at such rate, if any, as the Secretary of Agriculture determines and proclaims will effectuate the declared policy of the Act."

COMMENTS

The amendment in lines 4 and 5 is for clarity and eliminates the comparison of price and quantity.

While it is believed that it is not required that the tax now be imposed at the full rate, or not at all, and that a tax at a lesser rate can be imposed, the suggested amendment clarifies the language, so as to make certain that a finding by the Secretary of Agriculture does not require the abatement of all the tax.

In addition, the words in line 11, "assessed or paid," are quite confusing. The tax is payable without assessment. In addition, if the taxpayer became liable for the tax before the certification by the Secretary of Agriculture, but paid the tax after that date, then he is entitled to a refund, but if he paid the tax when due, he is not entitled to a refund. This unquestionably is not the result intended, and the proposed amendment cures the present defect.

AMENDMENT TO SECTION 15 (d)

Amend Section 15 (d) by striking out the provisions of the present subsection and inserting in lieu thereof the following:

"(d) If the Secretary of Agriculture has reason to believe that the payment of the processing tax on any basic agricultural commodity is causing or will cause to the processors or producers thereof disadvantages in competition from any competing commodity or competing commodities, including a basic agricultural commodity, by reason of any material shift in consumption between such commodities or products thereof, then he shall cause an appropriate investigation to be made and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary of Agriculture finds that such disadvantages in competition exist, or will exist,

he shall proclaim such finding. The Secretary of Agriculture shall specify in this proclamation the commodity or the products thereof in competition with the basic agricultural commodity, or the products thereof, and the compensating rate, or rates, of tax on the processing of the competing commodity, or on the processing thereof into competing products, or on the processing thereof into products competing as to use, necessary to prevent such disadvantages in competition. On and after the twentieth day succeeding the date of the signing of such proclamation, there shall be levied, assessed and collected, upon the first domestic processing of such commodity, or on the first domestic processing of such commodity into the competing products, or on the first domestic processing thereof into products competing as to use, a tax to be paid by the processor at the rate or rates specified, until such rate or rates are altered, pursuant to a further finding under this section, or the tax or rate thereof on the basic agricultural commodity is altered or terminated, in which event the rate or rates of tax on the competing commodity or commodities shall be altered or terminated, as the case may be, the alteration to be to such extent as the Secretary of Agriculture shall determine will best effectuate the declared policy of the Act. In no case shall the tax imposed upon such competing commodity exceed that imposed per equivalent unit, as determined by the Secretary of Agriculture upon the basic Agricultural commodity.

COMMENTS

Some of the language in Section 9 (b) is preferable to the language in Section 15 (d) and the two should conform.

It seems highly desirable that a period of time should elapse between the date of the proclamation and the effective date of the tax. In the first place, the Bureau of Internal Revenue will thus have an opportunity to give notice to the collectors, particularly at the ports of entry. In the second place, the industry affected will be given an opportunity to make an inventory for floor stocks tax purposes and will be in a position to readjust prices. This was not possible in the case of the compensating taxes on paper

and jute and the result was that various industries found it difficult to do business for several days following December 1.

It is believed that the change in language suggested would leave no doubt as to the power to apply the compensating tax provided by Congress at a varying rate according to the competing product produced, which result is the only way of effectuating the purpose of these provisions. While it is believed that the present language permits this, there is room for argument, and the new language is for the purpose of clarifying the present language and removing any doubt.

It is believed advisable to add "or producers", since their competitive position may be injured by a processing tax even though that of the processors is not. In the case of commodities in competition with hogs, for example, the processors of hogs are also the processors of cattle and sheep. Regardless of the competitive situation, they are not particularly anxious to pay taxes on cattle and sheep, in addition to the tax on hogs. The same situation may well arise, for example, in the case of rayon in competition with cotton, since many of the processors of cotton have a substantial interest in rayon mills. It is understood that pressure has been brought on processors who have testified in respect of competition from various articles at prior hearings, so that they would not testify at the later hearings.

AMENDMENT TO SECTION 15 (e)

Amend Section 15 (e) by striking out in lines 3 and 4, the words "in chief value", and inserting in lieu thereof the word "partly";

by inserting in line 7, after the comma following the word "apply", the words "whether imported as merchandise, or as a container of merchandise, or otherwise" followed by a comma; and by inserting in line 9, after the word "processing", the words "of such commodity."

This subsection as amended will read (new matter underscored):

"(e) During any period for which a processing tax is in effect with respect to any commodity there shall be levied, assessed, collected, and paid upon any article processed or manufactured wholly or partly from such commodity and imported into the United States or any possession thereof to which this title applies, from any foreign country or from any possession of the United States to which this title does not apply whether imported as merchandise, or as a container of merchandise, or otherwise, a compensating tax equal to the amount of the processing tax in effect with respect to domestic processing of such commodity at the time of importation; Provided, That all taxes collected under this subsection upon articles coming from the possessions of the United States to which this title does not apply shall not be covered into the general fund of the Treasury of the United States but shall be held as a separate fund and paid into the Treasury of the said possessions, respectively, to be used and expended by the governments thereof for the benefit of agriculture. Such tax shall be paid prior to the release of the article from customs custody or control."

COMMENTS

This is the converse of the situation under Section 17 (a).

See comments under the suggested amendments to that section. In addition thereto, it is to be noted that, whereas Hawaiian and Porto Rican sugar bags will bear a tax of 44 to 48 cents per ton of sugar, foreign bags will not, unless the above amendment is adopted.

The words "of such commodity" seem to be desirable in order to clarify this section.

AMENDMENT TO SECTION 16 (a) (2)

Amend subdivision (2) of Section 16 (a) by striking out in lines 2 and 3 the parenthetical expression "or if it has not been paid, the tax shall be abated" and by inserting after the last word of the subdivision, a comma and the words:

"which would have been paid if the processing had occurred on that date. No refund shall be allowed under this section unless claim therefor is presented within six (6) months after the date of the termination of the processing tax. No refund shall be made under this section to any person if the claim is for an amount less than ten dollars."

This subdivision as amended will read (new matter underscored):

"(2) Whenever the processing tax is wholly terminated, there shall be refunded to such person a sum in an amount equivalent to the processing tax with respect to the commodity from which processed, which would have been paid if the processing had occurred on that date. No refund shall be allowed under this section unless claim therefor is presented within six (6) months after the date of the termination of the processing tax. No refund shall be made under this section to any person if the claim is for an amount less than ten dollars."

COMMENTS

If a butcher has on hand at the date of the termination of the tax a large amount of products of a commodity subject to the processing tax for which he paid a price, including tax, he should be entitled to the refund. However, with this parenthetical expression in the Statute, the packer who has not yet paid the tax will file claim for abatement of the tax even though he has included it in his price to the butcher.

This suggested change limits the refund to the rate of the tax on the date of termination of the processing tax.

The suggested limitation of the time within which to file the claim for refund follows in substance the provisions of Section 1205(b) of the Revenue Act of 1926.

AMENDMENT TO SECTION 16 (b)

Amend Section 16 (b) by striking out at the beginning of line 7, the words "or abatement".

COMMENTS

See comments under Amendment to Section 16 (a) (2).

AMENDMENT TO SECTION 17 (a)

Amend Section 17 (a) by striking out all of the first sentence from the word "with" in line 3 to the period in line 7, and by substituting in lieu thereof the following:

"processed wholly or partly from a commodity with respect to which product or commodity a tax has been paid under this title, the exporter thereof shall be entitled at the time of exportation to a refund of the amount of tax due and paid with respect to such product. The term "product" includes any product heretofore or hereafter exported as merchandise, or as a container of merchandise, or otherwise. No refund shall be allowed under this section unless claim therefor is presented within six (6) months after the date of exportation, or after six (6) months after the adoption of this amendment, whichever is later."

This subsection as amended will read (new matter underscored):

"(a) Upon the exportation to any foreign country (including the Philippine Islands, the Virgin Islands, American Samoa, and the island of Guam) of any product processed wholly or partly from a commodity with respect to which product or commodity a tax has been paid under this title, the exporter thereof

shall be entitled at the time of exportation to a refund of the amount of tax due and paid with respect to such product. The term "product" includes any product heretofore or hereafter exported as merchandise, or as a container of merchandise, or otherwise. No refund shall be allowed under this section unless claim therefor is presented within six (6) months after the date of exportation, or after six (6) months after the adoption of this amendment, whichever is later."

COMMENTS

The expression "wholly or in chief value" limits the refunds and does not permit the refund of all of the taxes paid. For example, the cheaper grades of tires are in chief value of rubber, while the higher grades of tires, 10 ply or more, are in chief value of cotton. The processing tax has been paid on the cotton going into the cheaper grades of tires, as well as on the cotton going into the more expensive grades of tires. The processing tax is refundable under the statute as it now reads only on the more expensive grades of tires. As this provision is to encourage exportations as a means of removing surpluses, the amendment would seem to be desirable. The same comment may be made with respect to the definition of the term "product". For instance, there is a tax on cotton going into cotton bags. When wheat or any other commodity is exported, no refund is allowable on account of the cotton bag containing the wheat, and the exporter is accordingly at a disadvantage in competition abroad, because of the tax on the cotton going into the bag.

The amendment should apply to all exportations since the effective date of any processing tax. This will obviate any possibility of a law suit to test the Bureau of Internal Revenue's interpretation, and too little is involved to warrant leaving the matter open to suit.

There is no statute of limitation provided for the filing of claims for refund and it is suggested that six (6) months is ample for exporters to file their claims for refund.

AMENDMENT TO SECTION 17 (b)

Amend Section 17 (b) by striking out in line 6 the words "in chief value" and inserting in lieu thereof the word "partly".

This section as amended will read (new matter underscored):

"(b) Upon the giving of bond satisfactory to the Secretary of the Treasury for the faithful observance of the provisions of this title requiring the payment of taxes, any person shall be entitled, without payment of the tax, to process for such exportation any commodity with respect to which a tax is imposed by this title, or to hold for such exportation any article processed wholly or partly therefrom."

COMMENTS

See comments under Section 17 (a).

AMENDMENT TO SECTION 19 (b)

Amend Section 19 (b) by inserting after the figures "1932" in line 3, the words "and the provisions of Section 621(d) of the Revenue Act of 1932 relating to overpayments"; and by inserting at the end of subsection (b) of Section 19 the words:

"If the payment of any tax covered by any return under this title is hereafter postponed, interest shall be paid upon the amount of tax with respect to which payment has been so postponed, and shall be collected as a part of the tax, at the rate of six per cent per annum from the date when such tax would, but for such postponement, have been payable."

This subsection as amended will read (new matter underscored):

"(b) All provisions of law, including penalties, applicable with respect to the taxes imposed by section 600 of the Revenue Act of 1926, and the provisions of section 626 of the Revenue Act of 1932, and the provisions of Section 621(d) of the Revenue Act of 1932 relating to overpayments" shall in so far as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title: Provided, That the Secretary of the Treasury is authorized to permit postponement, for a period not exceeding ninety days, of the payment of taxes covered by any return under this title. If the payment of any tax covered by any return under this title is hereafter postponed, interest shall be paid upon the amount of tax with respect to which payment has been so postponed, and shall be collected as a part of the tax, at the rate of six per cent per annum from the date when such tax would, but for such postponement, have been payable."

COMMENTS

The Bureau of Internal Revenue has ruled that interest does not run on the postponed payments of processing and floor stocks taxes. Postponements of 30, 60 and 90 days are being allowed and unquestionably taxpayers are taking some advantage of the postponement unnecessarily, since interest does not run. It is believed that in many cases payments would be made more promptly if interest ran on the postponed payments.

AMENDMENT TO SECTION 19 BY ADDING NEW SUBSECTIONS (d) AND (e)

Amend Section 19 by adding after subsection (c) thereof the following subsections:

"(d) Where there has been an overpayment of any tax, penalty, or interest imposed by this title, no refund thereof shall be allowed unless claim therefor is presented within one (1) year after the date on which the tax penalty or interest was paid.

"(e) No suit or proceeding shall be maintained in any court for the recovery of any tax under this title alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, or of any refund allowed under Section 15 (c) or Section 17 (a) of this title, until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury, established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim, unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after any such disallowance notify the taxpayer thereof by mail."

COMMENTS

In view of the nature of the taxes imposed by Title 2 of the Agricultural Adjustment Act and the fact that the questions presented will not be complex as compared with tax questions generally, it is believed that a relatively short period of limitation within which a claim for refund can be filed should be incorporated in the Act. Accordingly, a period of one (1) year from the date of payment of the tax is recommended.

The Agricultural Adjustment Act contains no period of limitation with respect to suits and proceedings by the taxpayer. The suggested subsection (e) follows substantially the provisions of Section 3226 of the Revised Statutes, as amended.

ADDITION OF SECTION 20.

Amend the Agricultural Adjustment Act, as amended, by adding after Section 19, as amended, the following:

"Sec. 20 (a) Whoever in connection with the purchase of, or offer to purchase, any commodity subject to any tax under this title, or which is to be subjected to any tax under this title, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any amount deducted from the market price or the agreed price, of the commodity consists of a tax imposed under this title, or (2) ascribing a particular part of the deduction from the market price or the agreed price, of the commodity, to a tax imposed under this title, knowing that such statement is false or that the tax is not so great as the amount deducted from the market price or the agreed price, of the commodity, ascribed to such tax, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than \$1,000.00 or by imprisonment for not exceeding one year, or both.

"(b) Whoever in connection with the processing of any commodity subject to any tax under this title, whether commercially, for toll, upon an exchange, or otherwise, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any part of the charge for said processing, whether commercially, for toll, upon an exchange, or otherwise, consists of a tax imposed under this title, or (2) ascribing a particular part of the charge for processing, whether commercially, for toll, upon an exchange, or otherwise, to a tax imposed under this title, knowing that such statement is false, or that the tax is not so great as the amount charged for said processing ascribed to such tax, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than \$1,000.00 or by imprisonment for not exceeding one year, or both."

COMMENTS

It appears that country buyers are in many instances taking advantage of producers in the purchase of hogs. Let us say that the Chicago price for hogs is \$4.00 a hundred weight. Let us assume that the country buyer would ordinarily deduct \$1.00 therefrom. It is reported that the buyer agrees on \$3.00 a hundred and then tells the producer that \$1.00 must be deducted for the processing tax, although

the buyer does not have to pay such tax and does not have it deducted from the price he gets when he sells at Chicago. It is obvious that he knows that his statement to the farmer is false and that he is taking advantage of him.

Paragraph (a) of the above proposed amendment prescribes a penalty therefor which conforms to a certain extent to the penalties for frauds by purchasers, under Section 1123 of the Revenue Act of 1926, which Section is applicable under Section 19 of the Act.

It has also been reported that producers of wheat take their wheat to a toll mill to have it ground for their own consumption, make out the necessary affidavit or witnessed statement, to support an exemption which the processor will claim and who, therefore, must know that there will be no tax on account of the processing for this producer. Notwithstanding, the processor, as part of the processing tax, makes the producer pay a higher rate of toll than he otherwise would make him pay. The same situation might well result in the case of hogs slaughtered for a producer. Paragraph (b) of the above proposed amendment is for the purpose of meeting this situation, if possible.